

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**RECEIVED**

AUG 23 1999

In the Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b))	
Table of Allotments)	MM Docket No. 99-240
FM Broadcast Stations)	RM - 9503
(Albemarle and Indian Trail, North Carolina))	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS

Susquehanna Radio Corp. ("SRC"), licensee of Station WABZ(FM), Albemarle, North Carolina, by its counsel, hereby submits its Comments to the Notice of Proposed Rule Making ("NPRM") 14 FCC Rcd ____ (1999) (released July 2, 1999, DA 99-1286) proposing the reallocation of Channel 265A from Albemarle to Indian Trail, North Carolina as its first local service and the modification of Station WABZ's license to specify Indian Trail, accordingly. In support of this proposal SRC hereby states as follows:

1. In its petition, SRC emphasized the public interest benefits of the reallocation: (1) the elimination of two substantial grandfathered short spacings to Station WHSL-FM, High Point, North Carolina (21.35 km) and Station WIFM-FM, Elkin, North Carolina (6.88 km); (2) the reduction of a short spacing to Station WKXU(FM), Burlington, North Carolina from 72.54 km to 28.11 km; (3) the elimination of interference areas to two of the stations; (4) the provision of a first local service to Indian Trail, North Carolina; (5) the ability of WABZ to increase from a 3 kW to a 6 kW facility

and (6) a large gain in area based on the increase to 6 kW and a net population increase of 347,522 persons within the 60 dBu contour.

2. SRC also demonstrated that Indian Trail met the requirements under the change in community of license rules and policies including an extensive showing that Indian Trail is independent of Charlotte under the Faye and Richard Tuck criteria 3 FCC Rcd 5374 (1988). The NPRM requested comments on the issue of allotting Channel 265A to Indian Trail in contravention of 73.207(b) due to the remaining short spacing to Station WKXU, Burlington, North Carolina and despite the reduction of that short spacing by 44.43 km. The NPRM recognized that SRC's proposal complies with the case of Newnan and Peachtree City, Georgia 7 FCC Rcd 6307 (1992) but that four other cases are pending where the Commission requested comments on the continuation of the Newnan policy and its extension to post-1964 stations.

3. The Indian Trail proposal involves a Section 73.213 grandfathered short spacing whereby Station WABZ had already been authorized at Albemarle when the spacing rules were created in 1964. The Commission staff inaccurately describes the type of proposal under consideration here as "a new short spaced allotment" (NPRM at para. 6). See Eatontown, Point Pleasant and Red Bank, New Jersey, 5 RR 2d 1762 (1965) at para 15 ("this is not a new assignment in contravention of our rules but rather a shift of an existing assignment...to alleviate a serious existing situation"). The instant proposal is more accurately described as a major change in facilities which, it is undisputed, complies with Section 73.213. Furthermore, as set forth in the petition, the Indian Trail proposal complies with the policy set forth in the Newnan case in that "no new short spacings are created, no existing short spacings are exacerbated and the potential for interference between the currently short spaced stations is not increased." Clearly, the Indian Trail proposal

exceeds each of these requirements by improving the short spacing and interference relationship to all three pre-existing short spaced stations to a significant extent.

4. The Commission must evaluate this case and the Newnan policy under the public interest standard rather than become preoccupied with the terminology of creating “a new short spaced allotment.” Above all else the Commission must answer the question whether the public interest is served by the proposal. There is no question that the Indian Trail meets the public interest standard in all respects. Two grandfathered short spacings are completely eliminated. A third short spacing is substantially reduced. Interference areas are eliminated. A first local service is provided. Large gains in area and population are offered. There are no aspects of the proposal which would cause the Commission to balance the public interest benefits. There are no negative factors to be balanced. Furthermore, there is no doubt that whatever policy is ultimately adopted in the other four cases, this proposal should be granted ¹. Thus, SRC urges the Commission not to delay approval of this proposal should there be a delay in deciding the other four cases under review.

5. In Exhibit A, the licensees of Station WIFM-FM, Elkin and Station WKXU, Burlington have provided statements in support of this proposal. In para. 7 of the NPRM, the Commission states that the remaining short spacing to Station WKXU, Burlington requires a waiver

1. Those four cases were not cited in the NPRM. They are believed to be Sugar Hill and Toccoa, Georgia (NPRM), 13 FCC Rcd 17750 (1998); Killeen and Cedar Park, Texas (NPRM) 13 FCC Rcd 18790 (1998); Fremont and Holton, Michigan (NPRM) 13 FCC Rcd 18838 (1998) and Oceanside and Encinitas, California (NPRM) 14 FCC Rcd _____, 1999 Lexis 2139 (DA 99-919, released May 11, 1999). Each of these cases involve no change in transmitter site and therefore rely only on the public interest benefits of a first local service. Some of the cases involve post-1964 short spacings. However, the same policy should certainly apply where the stations were authorized in compliance with the Commission’s rules and should be afforded the same opportunity to change their community of license as other stations in conformity with the Rules (NPRM at para. 6).

of Section 73.207(b). To the extent a waiver request is needed from SRC, SRC hereby requests the waiver for the public interest reasons already stated. The waiver request is more accurately described as a continuation of the existing Section 73.207 waiver which currently exists due to the pre-existing authorization of the station under Section 73.213.

6. The cited case of Chillicothe, Forest, Lima, New Washington, Peebles and Reynoldsburg, Ohio 12 FCC Rcd 13710 (1996), recons. dismissed 14 FCC Rcd ____ 1999 Lexis 169 (DA 99-103, released January 15, 1999) is distinguishable because a new area of interference was created there constituting “a significant public interest detriment” Chillicothe at 13715.

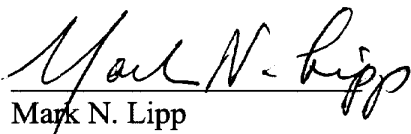
7. In para. 7, of the NPRM, the Commission staff also requests a showing that the proposed relocation of WABZ’s transmitter site will not cause interference to any new populated area. The attached Engineering Statement confirms that no new interference areas are affected. Indeed, the proposal will eliminate all existing interference areas and creates no new interference areas.

CONCLUSION

8. SRC urges the Commission to adopt its proposal to reallocate Channel 265A to Indian Trail as expeditiously as possible in order to allow WABZ to provide the public interest benefits of elimination of interference and short spacings, first local service and reception to many more people.

Respectfully Submitted,

SUSQUEHANNA RADIO CORP.

By: 
Mark N. Lipp

Shook, Hardy & Bacon
600 14th Street, NW
Suite 800
Washington, DC 20005
(202) 783-8400

Its Counsel

August 23, 1999

EXHIBIT A

**Before The
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 99-240
Table of Allotments)	RM-9503
FM Broadcast Stations)	
(Albemarle and Indian Trail, North)	
Carolina))	
To: Chief, Allocations Branch		
Policy and Rules Division		


Statement in Support of MM Docket No. 99-40

Carolina Media Group ("Carolina") is the licensee of Station WKXU(FM), Burlington, North Carolina, which operates on Channel 266C. Carolina is filing this statement in support of the Notice of Proposed Rule Making whereby Susquehanna Radio Corp. ("Susquehanna"), the licensee of Station WABZ(FM), Channel 265A, Albemarle, North Carolina, has requested the reallocation of Channel 265A to Indian Trail, North Carolina. This proposed reallocation will substantially reduce the short-spacing to Station WKXU(FM). Therefore, Carolina enthusiastically supported Susquehanna's request for the reallocation of Channel 265A to Indian Trail, North Carolina.

Respectfully submitted,

Carolina Media Group

By: _____


Donald W. Curtis
President

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Albemarle and Indian Trail, North)
Carolina))

MM Docket No. 99-240

RM-9503

To: Chief, Allocations Branch
Policy and Rules Division

Statement in Support of MM Docket No. 99-240

Von Broadcasting, Inc. is the licensee of Station WIFM-FM, Elkin, North Carolina, which operates on Channel 265A. Von is filing this statement in support of the Notice of Proposed Rule Making whereby Susquehanna Radio Corp. ("Susquehanna"), the licensee of Station WABZ(FM), Channel 265A, Albemarle, North Carolina, has requested the reallocation of Channel 265A to Indian Trail, North Carolina. This proposed reallocation will eliminate the substantial short-spacing to Station WIFM(FM). Therefore, Von enthusiastically supports Susquehanna's request for the reallocation of Channel 265A to Indian Trail, North Carolina.

Respectfully submitted,

Von Broadcasting, Inc.

By:



TECHNICAL EXHIBIT
IN SUPPORT OF COMMENTS OF
SUSQUEHANNA RADIO CORP. IN
IN MM DOCKET NO. 99-240
ALBEMARLE AND INDIAN TRAIL, NORTH CAROLINA

Technical Narrative

This technical exhibit has been prepared on behalf of Susquehanna Radio Corp. ("Petitioner"), licensee of Station WABZ, channel 265A, Albermarle, North Carolina, in support of comments in the Federal Communications Commission Notice of Proposed Rule Making in MM Docket No. 96-265 ("Notice"). The notice was issued in response to a Petition for Rule Making filed by the Petitioner requesting the amendment of Section 73.202(b) by the reallocation of channel 265A from Albermarle, North Carolina to Indian Trail, North Carolina and the modification of Station WABZ's license to specify Indian Trail as its community of license. The purpose of this technical exhibit is to provide information demonstrating that the relocation of WABZ's transmitter site will not adversely affect any population which now receives interference-free service.

As noted in the Petition, WABZ is currently involved in a 72.54 kilometer short-spacing with WKXU on channel 266C at Burlington, a 6.88 km short-spacing with WIFM-FM on channel 265A at Elkin, North Carolina and a 21.35 kilometer short-spacing with WHSL-FM on channel 262C at High Point, North Carolina. The short-spacings with WKXU and WHSL-FM are "grandfathered" under Section 73.213(a) and the short-spacing with WIFM-FM is "grandfathered" under Section 73.213(c) (pre-1964 short-spacing). The instant proposal will reduce the magnitude of the short-spacing with WKXU by 44.43 km, from 72.54 kilometers to 28.11 kilometers. Furthermore, the

short-spacings with WHSL-FM and WIFM will be eliminated. In addition, the instant proposal will eliminate all existing interference between WABZ and WHSL-FM and between WABZ and WKXU, and no new interference areas will be created.

Figure 1C, which was submitted with the Technical Exhibit attached to the Petition, is a map which depicts the protected 60 dBu, F(50,50) and interfering 54 dBu, F(50,10) contours for the licensed WKXU and WABZ operations and for the proposed WABZ operation at Indian Trail.¹ As shown, there is currently overlap of the WKXU interfering 54 dBu and the licensed WABZ protected 60 dBu contours, whereas the instant proposal will not be involved in contour overlap with WKXU. Also shown is the interference area within the licensed WABZ 60 dBu contour caused by WKXU. This interference area encompasses 103 square kilometers containing 1,259 persons. Thus, the instant proposal will eliminate interference with WKXU. Furthermore, no new interference areas will be created.

Figure 1D, which was also submitted with the Technical Exhibit attached to the Petition, is a map which depicts the protected 60 dBu, F(50,50) contour for WHSL-FM and the interfering 100 dBu, F(50,10) contour for the licensed WABZ operation. As shown, there is currently overlap of the licensed WABZ interfering 100 dBu contour and the WHSL-FM protected 60 dBu contour, whereas the instant proposal will not be involved in contour overlap with WHSL-FM. Also shown is the interference area within the WHSL-FM 60 dBu contour caused by the licensed WABZ

¹ It is noted that the locations of the protected and interfering contours for the proposed WABZ operation were determined using both the uniform and actual terrain methods.

operation. This interference area encompasses 8 square kilometers containing 1,224 persons. Thus, the instant proposal will eliminate interference with WHSL-FM. Furthermore, no new interference areas will be created.

Therefore, the instant proposal appears to comply with past FCC precedents in reallocation proposals involving "grandfathered" (pre-1964) short-spacings as (1) no new short-spacings are created, (2) no existing short-spacings are exacerbated and (3) interference between WABZ and WKXU and between WABZ and WHSL-FM will be eliminated.²



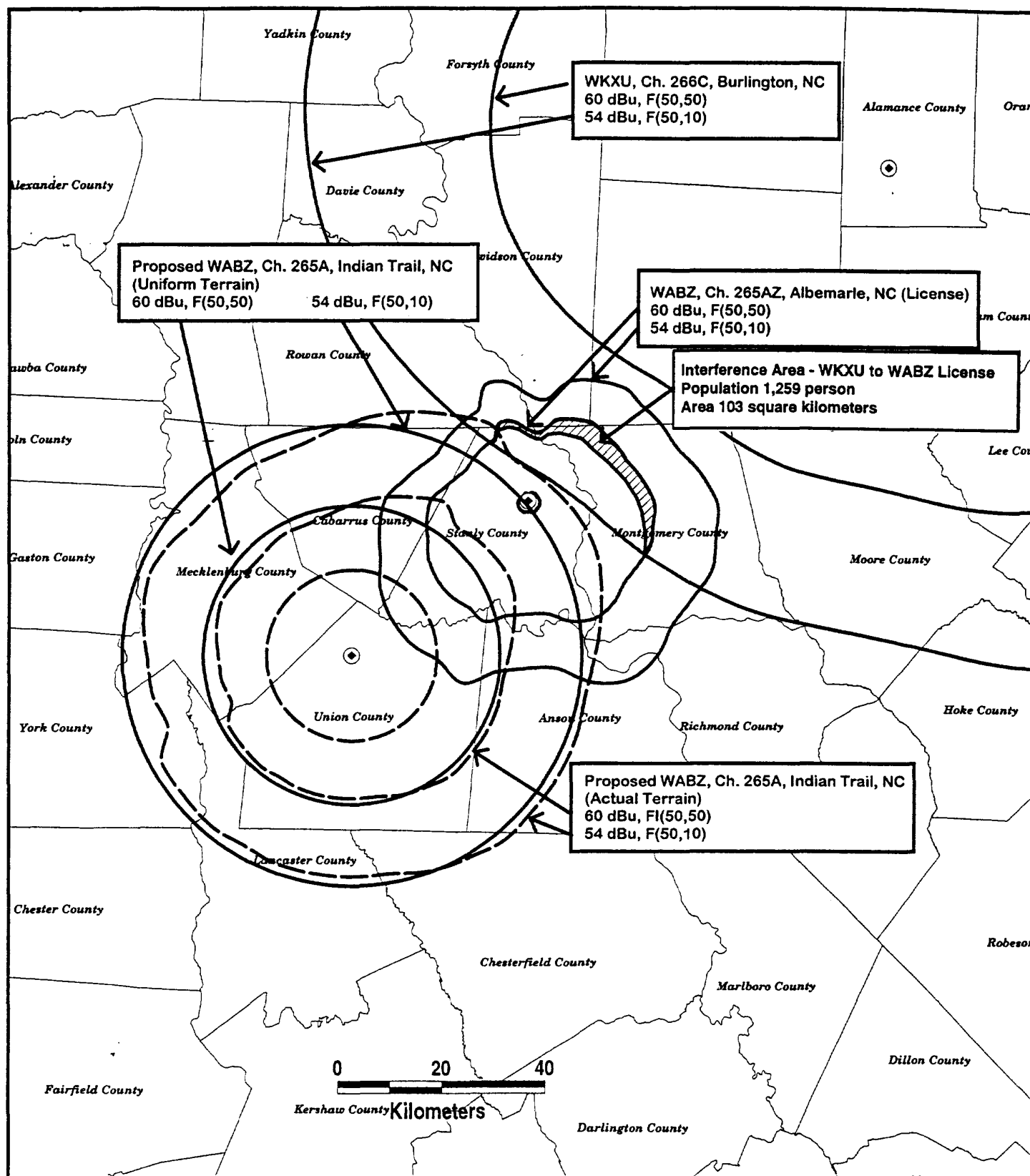
W. Jeffrey Reynolds

du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, Florida 34237
(941) 329-6000

August 19, 1999

² See Report and Order in Newnan and Peachtree City, Georgia, MM Docket No. 90-138 (DA 92-1203).

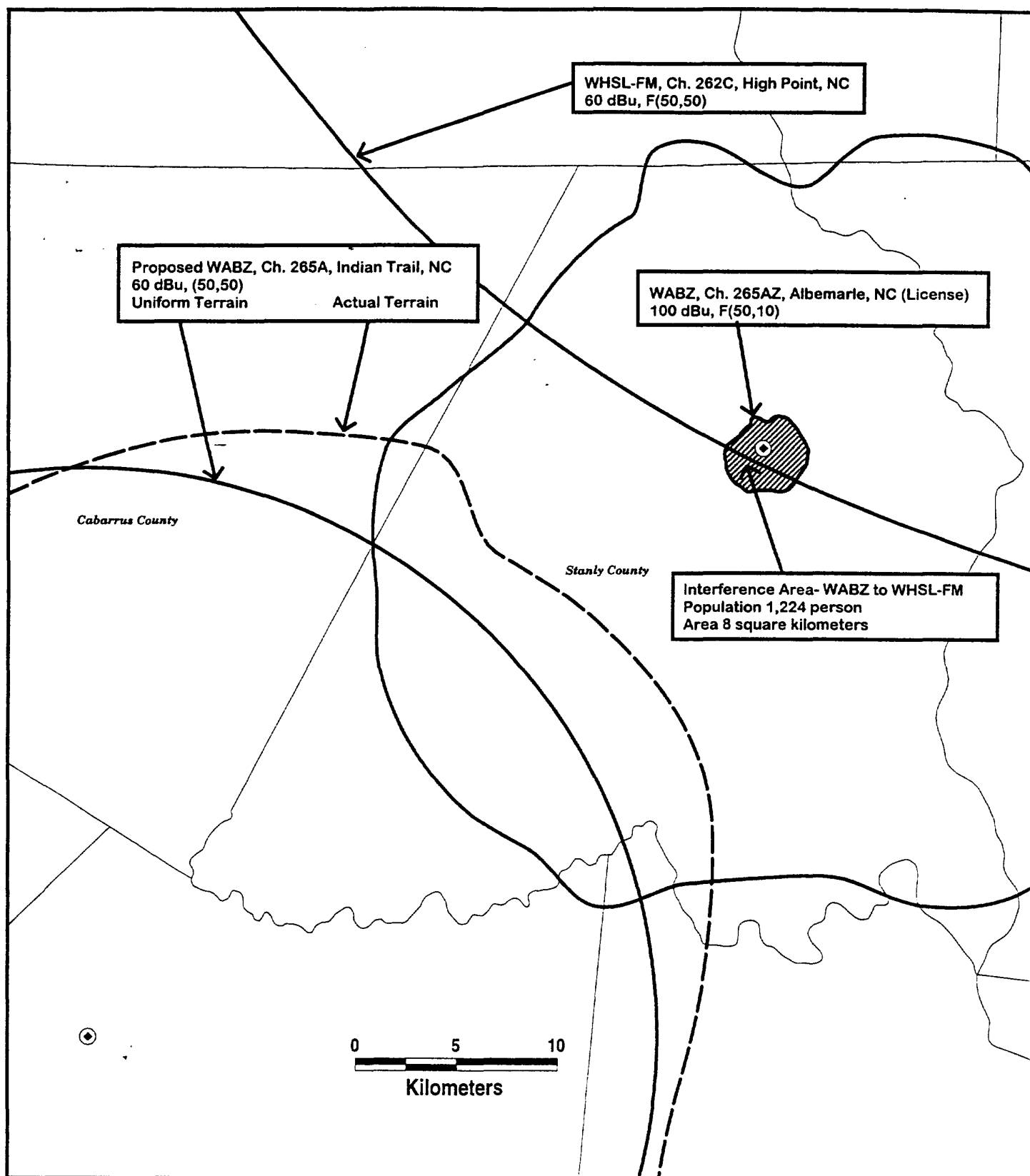
FIGURE 1C



**COVERAGE AND INTERFERING CONTOURS
PRESENT AND PROPOSED WABZ AND PRESENT WKXU**

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

FIGURE 1D



**COVERAGE AND INTERFERING CONTOURS
PRESENT AND PROPOSED WABZ AND PRESENT WHSL-FM**

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

CERTIFICATE OF SERVICE

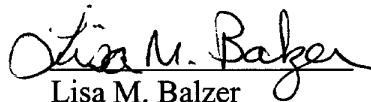
I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 23rd day of August, 1999 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"COMMENTS AND ALTERNATE PROPOSALS"** to the following:

* Ms. Leslie K. Shapiro
Federal Communications Commission
Mass Media Bureau
445 12th Street, SW
Room 3-A360
Washington, DC 20554

David Tillotson, Esq.
4606 Charleston Terrace, NW
Washington, DC 20007-1911
(Counsel to Station WIFM)

Mark J. Prak, Esq.
Brooks Pierce McLendon Humphrey & Leonard, LLP
P.O. Box 1800
Raleigh, NC 27602
(Counsel to Station WKXU)

Station WHSL-FM
Capstar NC Limited Partnership
650 Madison Avenue
New York, NY 10022


Lisa M. Balzer

* HAND DELIVERED